

JURISDICTION OVER CRIMINAL OFFENSES COMMITTED BY U.S. ARMED FORCES IN BEL- GIAN CONGO

*Exchange of notes at Washington March 31, May 27, June 23 and
August 4, 1943*

Entered into force August 4, 1943

Expired October 28, 1952,¹ in accordance with its terms

58 Stat. 1215; Executive Agreement Series 395

The Secretary of State to the Belgian Ambassador

DEPARTMENT OF STATE

WASHINGTON

March 31, 1943

EXCELLENCY:

I have the honor to refer to the Department's note of March 12, 1943 concerning an agreement between the United States and Belgium relating to the jurisdiction of American Service courts over members of the armed forces of the United States in the Belgian Congo.

It is the desire of the Government of the United States that the Service courts and authorities of its military and naval forces shall, during the continuance of the present conflict, exercise exclusive jurisdiction over criminal offenses which may be committed in the Belgian Congo by members of such forces.

If cases arise in which for special reasons the Service authorities of this Government may prefer not to exercise the above jurisdiction, it is proposed that in any such case a written statement to that effect shall be sent to the Belgian Government through diplomatic channels, in which event it would be open to the Belgian authorities to assume jurisdiction.

Assurance is given that the Service courts and authorities of the United States forces in the Belgian Congo will be willing and able to try and on conviction to punish all criminal offenses which members of the United States forces may be alleged on sufficient evidence to have committed in the Belgian Congo, and that the United States authorities will be willing in principle

¹ Six months after entry into force for the United States of treaty of peace with Japan (3 UST 3169; TIAS 2490).

to investigate and deal appropriately with any alleged criminal offenses committed by such forces in the Belgian Congo which may be brought to their attention by the competent Belgian authorities or which the United States authorities may find have taken place.

In so far as may be compatible with military security, the Service authorities of the United States will conduct the trial of any member of the United States forces for an offense against a member of the civilian population promptly in open court and within a reasonable distance from the place where the offense is alleged to have been committed so that witnesses may not be required to travel great distances to attend the trial.

The competent American authorities will be prepared to cooperate with the authorities of the Belgian Congo in setting up a satisfactory procedure for affording such mutual assistance as may be required in making investigations and collecting evidence with respect to offenses alleged to have been committed by members of the armed forces of the United States. As a general rule it would probably be desirable that preliminary action be taken by the authorities of the Belgian Congo on behalf of the American authorities where the witnesses or other persons from whom it is desired to obtain testimony are not members of the United States forces. In the prosecution in the courts of the Belgian Congo of persons who are not members of the United States forces but where members of such forces are in any way concerned, the Service authorities of the United States will be glad to render such assistance as is possible in obtaining testimony of members of such forces or in making appropriate investigations.

It is proposed that the foregoing arrangement shall be in effect during the present war and for a period of six months thereafter.

If the above arrangement is acceptable to the Belgian Government, this note and the reply thereto accepting the provisions outlined shall be regarded as placing on record the understanding between our two Governments.

Accept, Excellency, the renewed assurances of my highest consideration.

CORDELL HULL

His Excellency

COUNT ROBERT VAN DER STRATEN-PONTHOZ
Belgian Ambassador

The Belgian Ambassador to the Secretary of State

AMBASSADE DE BELGIQUE

D. 6801
No. 2689

WASHINGTON, May 27th, 1943

SIR:

I have the honor to refer to Your Excellency's letter of March 31st, concerning an agreement between the United States and Belgium relating to

the jurisdiction of American Service courts over members of the armed forces of the United States in the Belgian Congo.

The Belgian Government assumes that in this arrangement the words "criminal offenses" include all criminal offenses within the law of the Belgian Congo. My Government also assumes that this arrangement provides only for the punishment of criminal offenses and that all actions (actions civiles) involving the collection of damages for injury which may be caused by such offenses will remain within the province of the courts of the Belgian Congo.

If this interpretation meets with the approval of Your Excellency, the Belgian Government suggests that the two points indicated above be specified in the arrangement.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

R. V. STRATEN

The Honorable

The SECRETARY OF STATE
Department of State
Washington, D.C.

The Secretary of State to the Belgian Ambassador

DEPARTMENT OF STATE

WASHINGTON

June 23, 1943

EXCELLENCY:

I have the honor to refer to your note no. 2689 of May 27, 1943 with further reference to jurisdiction of American Service courts over members of the armed forces of the United States in the Belgian Congo.

The words "criminal offenses" in the proposed agreement were intended to include all such offenses committed in the Belgian Congo. Of course military courts of the United States cannot apply the law of the Belgian Congo as such. It is assumed however that offenses under that law would also be offenses under the law of the United States. In this connection it may be pointed out that courts-martial of the United States have jurisdiction over common law offenses as will be indicated by the following provisions of the Articles of War (Act of June 4, 1920, 41 Stat. 787):

Article 92:

"Any person subject to military law who commits murder or rape shall suffer death or imprisonment for life, as a court-martial may direct; but no person shall be tried by court-martial for murder or rape committed within the geographical limits of the States of the Union and the District of Columbia in time of peace."

Article 93 states:

“Any person subject to military law who commits manslaughter, mayhem, arson, burglary, housebreaking, robbery, larceny, embezzlement, perjury, forgery, sodomy, assault with intent to commit any felony, assault with intent to do bodily harm with a dangerous weapon, instrument, or other thing, or assault with intent to do bodily harm, shall be punished as a court-martial may direct.”

Article 96 provides:

“Though not mentioned in these articles, all disorders and neglects to the prejudice of good order and military discipline, all conduct of a nature to bring discredit upon the military service, and all crimes or offenses not capital, of which persons subject to military law may be guilty, shall be taken cognizance of by a general or special or summary court-martial, according to the nature and degree of the offense, and punished at the discretion of such court.”

Offenses against local laws not specifically mentioned in Articles 92 and 93 of the Articles of War may be adequately punished under Article 96 as offenses of a nature to bring discredit upon the military service. It is believed that this matter is adequately covered by the fourth paragraph of my note of March 31, 1943 which gives assurance that the service courts and authorities of the United States will be willing and able to try and punish all criminal offenses which members of such forces may commit in the Belgian Congo.

The Belgian Government is correct in its assumption that the proposed arrangement is intended to cover only offenses of a criminal nature. Should experience indicate the necessity of special arrangements concerning civil cases the matter will then be taken up with you. However, in connection with actions for damages on account of injuries to persons or property by members of the armed forces of the United States in the Belgian Congo it may be stated that the military authorities of the United States are empowered to set up military claims commissions to consider such cases in foreign countries. Claims in amounts up to \$5,000 may be adjudicated and paid by the military authorities. Claims in excess of that amount may be recommended to Congress for payment by the Secretaries of War or Navy. Should the necessity be apparent such commission, will, no doubt, be provided for in the Belgian Congo.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:

BRECKINRIDGE LONG

His Excellency

COUNT ROBERT VAN DER STRATEN-PONTHOZ

Belgian Ambassador

The Belgian Ambassador to the Secretary of State

AMBASSADE DE BELGIQUE

D. 6801 B
No. 3789

WASHINGTON, August 4th, 1943

SIR,

I have the honor to refer to Your Excellency's notes of March 31st. and June 23rd. in the matter of the proposed arrangement between the United States and Belgium relating to jurisdiction of American Service Courts over members of the armed forces of the United States in the Belgian Congo.

I have been instructed to inform Your Excellency that the Belgian Government accepts the provisions of the proposed arrangement such as were outlined in the abovementioned notes.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

R. V. STRATEN

The Honorable

THE SECRETARY OF STATE

Department of State

Washington, D.C.